In the Supreme Court
OF THE
United States

October Term, 1954

No. 19

National Union of Marine Cooks & Stewards, a voluntary association,
Petitioner,

vs.

George Arnold, et al.,
Respondents.

REPLY BRIEF FOR PETITIONER.

Norman Leonard,
240 Montgomery Street, San Francisco 4, California,
Counsel for Petitioner.

Glaistein, Anderson, Leonard & Sibbett,
240 Montgomery Street, San Francisco 4, California,
Of Counsel.

Subject Index

Table of Authorities Cited

Statutes

Texts

In the Supreme Court
OF THE
United States

OCTOBER TERM, 1954

No. 19

NATIONAL UNION OF MARINE COOKS & STEWARDS, a voluntary association,
Petitioner,

vs.

GEORGE ARNOLD, et al.,
Respondents.

REPLY BRIEF FOR PETITIONER.

I.

THE ABSENCE OF LEGISLATIVE SUPPORT FOR THE JUDGMENT BELOW IS PERSUASIVE THAT IT IS LACKING IN DUE PROCESS.

Respondents concede that the dismissal of the appeal by the court below, without granting petitioner a hearing on the merits, was not authorized by any act of the state legislature. (Respondents' Brief p. c. 8-9.)

Admittedly, therefore, the judgment below does not come to this Court "encased in an armor wrought by prior legislative deliberation." *Bridges v. California*, 314 U.S. 252-261.[1] In determining whether it offends the guarantees of the Fourteenth Amendment, a judgment devoid of such a legislative foundation is subject to closer scrutiny than might otherwise be the case.[2]

Furthermore, the dismissal of the appeal represents a departure not only from the legislative scheme existing in the State of Washington, but existing also in substantially all of the other states of the union.[3] While universality of legislation is not conclusive,

---

[1]Indeed here, as in *Bridges v. California* (see 314 U.S. at 261, n. 3), the only evidence of the legislature's appraisal of the problem indicates a policy quite to the contrary of that followed by the court below. (See Brief for Petitioner, pp. 6-10, setting forth the applicable Washington statutes respecting the grounds for dismissal of appeals on the one hand and the limitations on the power to punish for contempt on the other.)

[2]In *Scott v. McNeal*, 154 U.S. 34, this Court reversed the decision of the Supreme Court of Washington which, without statutory authority, had permitted an administration of the estate of a missing person, subsequently determined to have been alive. This Court held that the due process clause of the Fourteenth Amendment forbade the assertion of jurisdiction in such a case. In *Cunnius v. Reading School District*, 198 U.S. 456, however, this Court upheld precisely the same action when it was based upon a statute enacted by the Pennsylvania legislature.

[3]*Alabama:* Code (1940), Title 19, Sec. 9; *Arkansas:* Statutes (1947), Secs. 34-901, 902; *California:* Code of Civil Procedure, Secs. 1209, 1318; *Connecticut:* General Statutes (1949), Sec. 7702; *Georgia:* Code (1933), Secs. 2-120; 24-104, 105; *Idaho:* Code (1947), Secs. 7-601, 610; *Indiana:* Statutes Annotated (1933), Sec. 2-4715; *Iowa:* Code (1954), Sec. 665.4; *Michigan:* Statutes Annotated (1935), Sec. 27.530; *Minnesota:* Statutes Annotated (1945), Sec. 588.02; *Mississippi:* Code (1942), Sec. 1656; *Missouri:* Vernon's Annotated Statutes (1949), Sec. 467.120; *Montana:* Revised Code (1947), Sec. 93.9810; *Nebraska:* Revised Statutes (1948), Sec. 25-2121; *Nevada:* Compiled Laws (1929), Sec. 8950-1; *New*

"it is plainly worth considering in determining whether the practice 'offends some principle of justice so rooted in the traditions and conscience of our people as to be ranked as fundamental.' Snyder v. Massachusetts, 291 U.S. 97." *Leland v. Oregon*, 343 U.S. 790, 798. This is especially so where, as here, the practice departed from is an ancient and venerable one,[4] for "the fact that a procedure is so old as to have been customary and well-known in the community is of great weight in determining whether it conforms to due process." *Anderson National Bank v. Luckett*, 321 U.S. 233, 244.

Even if the judgment below could be supported, as respondents seem to urge, on the basis of a presumption of lack of merit in the appeal, it has been generally held that the creation of such presumptions is not the function of Courts but of the legislatures. Cf. *Hammond Packing Co. v. Arkansas*, 212 U.S. 322, 350; *Carpenter v. Winn*, 221 U.S. 533; *Walter Cabinet Co. v. Russell*, 250 Ill. 416, 95 N.E. 462; *People v. Geo. Henriques & Co.*, 267 N.Y. 398, 196 N.E. 304.

Jersey: Statutes Annotated (1940), Sec. 2:15-7; *New York:* Judiciary Law (1948), Secs. 750, 751, 753; *North Carolina:* General Statutes (1953), Secs. 5-1, 5-4; *North Dakota:* Revised Code (1943), Secs. 27-1003, 1004; *Ohio:* General Code (1938), Secs. 12137, 12142; *Oklahoma:* Statutes Annotated (1937), Title 21, Secs. 565, 566; *Pennsylvania:* Purdon's Statutes Annotated (1930), Secs. 17-2041, 2042; *Utah:* Code Annotated (1935), Secs. 78-32-1, 78-32-10; *Washington:* Revised Code (1951), Sec. 7.20.090; *Wisconsin:* Statutes (1953), Secs. 295.01, 295.02, 295.13.

[4]Most of the statutes (supra, n. 3) have been in the codes of the various states for many years. See also the discussion in *Hovey v. Elliott*, 167 U.S. 409, 415, 453, which contains a comprehensive review of the early authorities both in England and here.

II.

SINCE THE PROCEEDING BELOW WAS IN PERSONAM, THE EXPENDITURE OF THE FUNDS WAS NOT SUCH A FRUSTRATION OF THE COURT'S POWER AS TO JUSTIFY THE DISMISSAL OF THE APPEAL.

Respondents contend, however, that because in some cases (factually and legally quite different from the case at bar) an appeal may be dismissed without contravening constitutional guarantees, this may be done in all cases—or in any event it may be done in this one.

Thus, in reliance upon cases upholding the dismissal of criminal appeals where the defendant has fled the jurisdiction or of appeals in domestic relations cases where an appellant has removed minor children from the jurisdiction, respondents argue that the dismissal here does not offend due process. Respondents fail, however, to recognize the inherent differences between those cases and this.

In both the criminal and the domestic relations cases the appeals were dismissed not to punish appellants for contempt but because the act complained of destroyed the very basis for the Court's jurisdiction. In each case the very "corpus" of the action, so to speak, was the physical body of the prisoner or of the child: the removal of that corpus removed the *res* upon which the judgment of the Court could operate.[5] Certainly such a situation presents quite a dif-

[5]See for example *Casebeldt v. Butler*, 175 Ky. 381, 194 S.W. 305 (Respondents' Brief, p. 18) "[Appellant has taken the child] to another state, so that the orders of the court cannot be enforced against him"; *Bronk v. Bronk*, 46 Fla. 474, 35 So. 871 (Respond-

ferent question of due process—if it presents one at all—from the question posed in the case at bar.[6]

Here the judgment was not *in rem* as to any specific property, but was *in personam* only.[7] It created no obligation as to any specific bonds. It simply transferred what had been an inchoate tort claim into an obligation to pay a stated amount of money.[8] No specific monies were "earmarked" by the judgment, and therefore the expenditure by petitioner of any specific sum cannot be said to have destroyed the very corpus of the appeal, as was the situation in all of the cases relied upon by respondents.

Indeed, respondents recognize that not only was the petitioner a non-resident of the State of Washington, but that all of petitioner's assets of any sub-

---

ents' Brief, p. 17): "The appellant . . . remains beyond [the court's] jurisdiction, and renders it powerless to enforce any decree"; *Spradling v. Spradling*, 74 Okla. 276, 181 Pac. 148: "[Appellant] absents himself and keeps beyond the jurisdiction of the court."

[6]Even in the criminal cases, the appeals will be heard when the petitioner subsequently returns or is apprehended. *Crawford v. State*, 94 Atl. 2d 605 (Del.). Cf. *Eisler v. United States*, 338 U.S. 189.

[7]Cf. *The Fred M. Lawrence*, 94 Fed. 1017 (CA 2), where the Court affirmed a decree taken *pro confesso* in an admiralty proceeding after the claimant to the attached vessel had failed to furnish adequate security. The opinion points out that the doctrine of *Covey v. Elliott*, 107 U.S. 409, does not apply because in the *in rem* proceeding "... the order that the libel be taken pro confesso was not a punishment, but was an order made upon the default of the claimant and her sureties . . . In a suit in admiralty *in rem* the vessel which is the offending thing is the defendant . . . The order . . . was not a punishment but was to enable the libelant to bring to an end a proceeding in rem in which through the default of the claimant it had neither res nor substitute." (Id. at 101.

[8]Cf. *Freeman on Judgments*, 5th Ed., Vol. 1, pp. 5, 25, 170; Vol. 2, pp. 1925, 1955, 1973.

stance were always situated in California (Respondents' Brief, pp. 5-15; TR 45), and that the very bonds in question never were in the State of Washington. (Respondents' Brief, p. 4; TR 13-14.) Thus respondents' view is that a non-resident may, consistently with due process, be compelled either to supersede or to bring its foreign property into the jurisdiction in satisfaction of a judgment upon the pain of forfeiting its statutory right to appeal. This would appear to be contrary to this Court's teaching in *Pennoyer v. Neff*, 95 U.S. 714, and in any case clearly points up the difference between the due process questions posed in this case on the one hand, and in the cases relied upon by respondents on the other. For in these criminal and divorce cases not only was there a specific *res* upon which the judgment operated and the destruction of which destroyed the jurisdiction of the court, but the *res* in question had always—until the wrongful act complained of—been within the jurisdiction of the court, whereas here the bonds never had been.

III.

THE PRESUMPTION PERMITTED BY HAMMOND PACKING CO. v. ARKANSAS, 212 U.S. 322, IS NOT PERMISSIBLE HERE.

Respondents urge that the failure to deposit the bonds represents such an admission of lack of merit in the appeal as to support the judgment below. (Respondents' Brief, pp. 22-23.) Their reliance in this regard upon *Hammond Packing Co. v. Arkansas*, 212 U.S. 322, and *Lawson v. Black Diamond Coal Mining Co.*, 44 Wash. 26, 86 Pac. 1120, is ill-founded for the reasons already stated. (Brief for Petitioner, pp. 16-20.) The *Hammond* and *Lawson* cases involved *statutory* presumptions of lack of merit in a cause or a defense based upon the *failure to produce competent and relevant evidence* in relation thereto. Due process is not offended in such a case only because the presumption indulged in is a rational one. So conscious have the Courts been of the necessity of limiting their holdings to this rationale that when a cause of action or a defense is divisible and the failure to discover runs only to a portion thereof, that portion only is stricken and the party is permitted to proceed with what remains. *Feingold v. Walworth Bros.*, 238 N.Y. 446, 144 N.E. 675; *People v. George Henriques & Co.*, 267 N.Y. 398, 196 N.E. 304.[2]

The presumption respondents seek to create is utterly artificial. Not only as heretofore pointed out

[2]In general the Courts have been most cautious in exercising the stringent powers given under these statutes. Cf. *Vecchia v. Fairchild Engine and Airplane Corp.*, 171 Fed. 2d 610 (CA 2); *Producers Releasing Corp. de Cuba v. PRC Pictures*, 176 F. 2d 93 (CA 2), and the state cases collected in 144 ALR 383-388.

(Brief for Petitioner, p. 16) was petitioner litigating the validity of the contempt order, but, since the order to transfer the bonds was not appealable under the state practice (*State ex rel. Mangaoang v. Superior Court*, 30 Wash. 2d 692, 193 Pac. 2d 318) the method employed by petitioner was a legitimate one for testing the validity of the order requiring it to turn over the bonds. *State ex rel. Mangaoang v. Superior Court*, supra. Certainly a litigant cannot be said to lack such faith in its appeal as to justify its dismissal because it refuses to comply with the first order of a *nisi prius* judge to turn over more than three-quarters of its total assets[10] to a receiver while it is litigating the validity of both the underlying judgment and the turnover order. This is quite different from refusing (in the face of a statutory command) to provide information necessary to the orderly determination of a lawsuit.[11]

Neither case nor statute has been found which lends any support to respondents' theory that a presumption of lack of merit may be indulged in because of a failure to turn over money while litigation is pending. To

---

[10]Respondents allege that in September 1951 petitioner had approximately $360,000 in assets, of which the bonds sought totaled $298,000. (Tr. 45.)

[11]". . . It does not follow at all that *Hovey v. Elliott*, which related to an incidental order for payment of money into court, and not at all to a preparation of the pleadings for a proper understanding of the suit . . . applies to this case." *Young & Holland Co. v. Brande Bros.*, 162 F. 663, 664 (CA 1).

Cf. *Wittenberg Coal Co. v. Compagnie Havrasie Peninsularie*, 22 Fed. 2d 904, 905 (CA 2). "The refusal to answer the interrogatories is more than a contempt. It was a failure to give information which the appellee was entitled to under the rules in admiralty."

the contrary, *Exploration Mercantile Co. v. Pacific Hardware & Steel Co.*, 177 Fed. 825 (CA 9), (Brief for Petitioner, p. 14, n. 10), denied a motion to dismiss a pending appeal because of a contempt which consisted in a violation (while the litigation was pending) of a Court order enjoining the sale and distribution of the property or estate of a bankrupt. *Morehouse v. Pacific Hardware & Steel Co.*, 177 F. 377 (CA 9); *Morehouse v. Giant Powder Co.*, 206 F. 24 (CA 9).

IV.

THE RIGHT TO APPEAL ALLOWED TO OTHER PERSONS MAY NOT BE TAKEN FROM PETITIONER.

The cases cited for the broad proposition that "due process does not comprehend the right of appeal" (Respondents' Brief, p. 10), do not upon analysis appear to require affirmance of the judgment below for none of them presented the question here involved.

District of Columbia v. Clawans, 300 U.S. 613, involved only the question of the denial of a right to a jury trial for petty offenses and the language quoted by respondents was not necessary to a determination of that issue.

Reetz v. Michigan, 188 U.S. 505, involved a conviction for practicing medicine without a license. There was an appeal from the conviction, appellant contending that the determination of the Board of Medical Examiners on his competency to practice was invalid because not subject to judicial review. All this

Court said was that nothing in the Fourteenth Amendment prevented a state from granting to an administrative tribunal the power to make final determination of such question. *Pittsburg etc. v. Backus*, 154 U.S. 421, involved an action to restrain the collection of taxes. On appeal from the lower court's order against the taxpayer, the contention that the tax determination was invalid because there was no review of the action of the Board of Tax Commissioners was all that was involved. The case is similar in principle to *Reetz v. Michigan, supra*, and is not dispositive of the issue here.

In *McKane v. Durston*, 153 U.S. 684, an appeal was taken from a conviction in the state court. While that appeal, which was allowed, was pending, a habeas corpus proceeding was brought in the Federal Court seeking release on bail pending appeal. Nothing was determined except that the Fourteenth Amendment did not require a state to release an appellant on bail under such circumstances.

To the contrary of all the foregoing, the question at bar is whether once a statutory right to appeal is granted a court may nonetheless (and in the absence of a statute authorizing the dismissal of the appeal upon the grounds here invoked) single out petitioner and punish it by dismissal of its appeal for a contempt unrelated to the merits of the cause. In addition to the cases already cited (Brief for Petitioner, p. 11, n. 7, p. 21), the following suggest that the due process clause of the Fourteenth Amendment requires a reversal of the judgment below: *State ex rel. Hahn*

Bakery Co. v. Anderson, 269 Mo. 381, 190 S.W. 857;[12] *Dowd v. United States*, 340 U.S. 206.[13]

V.

THE COURT BELOW LACKED JURISDICTION OF THE CAUSE OF ACTION.

As we pointed out in our opening brief (p. 22, n. 16), the only question now before the Court is whether the dismissal of the appeal deprived petitioner of the rights guaranteed to it by the Fourteenth Amendment; the correctness of the ruling of the court below in assuming jurisdiction over this cause of action in the light of this Court's decisions in *Garner v. Teamsters Union*, 346 U.S. 45, and *Capital Service Inc. v. NLRB*, 347 U.S. 501, is not presently before the Court. Respondents' contention that the entire matter is put at rest by *United Construction Workers v. Laburnum Construc-*

---

[12] "For while the right of appeal is not essential to due process of law, yet if an appeal be allowed to some persons and not to all persons similarly situated, such a deprivation of the right to an appeal is equivalent to the denial of due process of law . . ." (269 Mo. at 385, 190 S.W. at 858.)

[13] "In this Court the State admits, as it must, that a discriminatory denial of the statutory right of appeal is a violation of the Equal Protection Clause of the Fourteenth Amendment. Cochran v. Kansas, 316 U.S. 255 . . . The Fourteenth Amendment precludes Indiana from keeping respondent imprisoned if it persists in depriving him of the type of appeal generally afforded those convicted of crime." (340 U.S. at 208.) Cf. *Frank v. Mangum*, 237 U.S. 309, 327, where this Court said that while the Fourteenth Amendment did not require the state to provide an appeal, "it is perfectly obvious that where such an appeal is provided for, and the prisoner has had the benefit of it, the proceedings in the appellate tribunal are to be regarded as part of a process of law under which he is held in custody by the state, and to be considered in determining any question of alleged deprivation of his life or liberty contrary to the Fourteenth Amendment."

No. [redacted] 19

Supreme Court of the United States

OCTOBER TERM, 1953

NATIONAL UNION OF MARINE COOKS AND STEWARDS,
a voluntary association, *Petitioner*,

vs.

GEORGE ARNOLD, *et al.*, *Respondents.*

BRIEF OF RESPONDENTS IN OPPOSITION TO PETITION FOR CERTIORARI

SAMUEL B. BASSETT,
Counsel for Respondents.

JOHN GEISNESS,
Of Counsel.
811 New World Life Building,
Seattle 4, Washington.

THE ARGUS PRESS, SEATTLE

No. 529

Supreme Court of the United States

OCTOBER TERM, 1953

NATIONAL UNION OF MARINE COOKS AND STEWARDS, a voluntary association, *Petitioner*,

vs.

GEORGE ARNOLD, *et al.*, *Respondents.*

BRIEF OF RESPONDENTS IN OPPOSITION TO PETITION FOR CERTIORARI

SAMUEL B. BASSETT,
Counsel for Respondents.

JOHN GEISNESS,
Of Counsel.
811 New World Life Building,
Seattle 4, Washington.

THE ARGUS PRESS, SEATTLE

INDEX

TABLE OF CASES

TEXTBOOKS

STATUTES

CONSTITUTION

COURT RULES

Supreme Court of the United States

OCTOBER TERM, 1953

NATIONAL UNION OF MARINE COOKS AND STEWARDS, a voluntary association, *Petitioner*, vs. GEORGE ARNOLD, *et al.*, *Respondents.*	No. 529

BRIEF OF RESPONDENTS IN OPPOSITION TO PETITION FOR CERTIORARI

OPINIONS BELOW

The order of the state court toward which the petition for certiorari is directed (R. 53) has not been reported. However, three opinions have been published on different phases of the case (36 Wn.(2d) 557, 219 P.(2d) 121; 41 Wn.(2d) 22, 246 P.(2d) 1107; 142 Wash. Dec. 590, 257 P.(2d) 629) and another opinion, filed February 2, 1954, will very shortly be published in Volume 144 of the Washington Supreme Court advance sheets.

JURISDICTION

Jurisdiction is invoked under 28 U.S.C., Section 1257(3). Petitioner's theory is that a "right, privilege or immunity" was "specially set up or claimed under the Constitution" of the United States. We submit that petitioner did not adequately set up or claim the federal rights it now argues.

For a claim of federal right, petitioner relies primarily upon a brief filed in the State Supreme Court May 15, 1952 (Petition, page 2, referring to R. 17, 22). The closest thing to a claim of federal right in that brief is the following statement:

> "We doubt that there is inherent power to deny a person in contempt the right to defend an action against him, for this would involve the taking of his property without due process of law, in violation of the Fourteenth Amendment. See: *Peters v. Berkeley* (1927) 219 N.Y.S. 709; *Maran v. Maran* (1910) 122 N.Y.S. 9. The rule does not apply when the interest of more than the person in contempt would be involved."

The above-quoted statement is not one in which petitioner "unmistakably declares that he invokes, for the protection of his rights, the Constitution * * * of the United States." Such a declaration is essential to raise a federal question and preserve it for review. *Michigan Sugar Co. v. Michigan*, 185 U.S. 112, 22 S. Ct. 581, 46 L.ed. 829. More particularly, petitioner did not make such a declaration as to the claims it now urges.

The statement made by petitioner to the state court is not only equivocal, but it is an inadequate generalization. Petitioner *was* accorded "the right to defend" in the trial court. To admit the generalization is only to beg the question. How was petitioner denied "the right to defend" guaranteed by the Fourteenth Amendment? The last quoted sentence inserts a greater ambiguity, particularly when read with the succeeding paragraph of the brief in which the quotation is contained:

"Respondents seek not only to dismiss appellant union's appeal, or strike its brief, but they also want to deny appellant Harris, his appellate remedies. This is improper, since appellant Harris is not in contempt. Further, to strike appellant union's brief would necessarily require the striking of appellant Harris' brief."

Thereafter, the foregoing statement became irrelevant, because only the appeal of petitioner was dismissed (R. 53) and the appeal of Harris was separately docketed for hearing (R. 52).

In a footnote (Petition, p. 2) petitioner refers to later briefs filed by it in the State Court to show that it made a claim of federal right. Assuming that with the aid of these briefs a proper and timely claim under the due process clause of the Fourteenth Amendment to the Federal Constitution can be pieced out to support the present due process argument, it certainly cannot be said that the equal protection clause was invoked, because it was not mentioned at all, so far as we find, except in the following paragraph of a brief filed June 13, 1952 (R. 26, at 28):)

"Respondents' contention is that the Supreme Court should strike appellants' appeal from the judgment of $475,000.00 against them, because appellant union has been adjudged guilty of contempt in superior court. Then, respondents contend, without inquiring as to whether there was jurisdiction or justification for the superior court adjudication, this court should enter its own coersive order in contempt proceedings without receiving any evidence, or conducting any hearing —without even making a determination as to whether the bonds to be transferred are, or have

been, at any time material to this proceeding, in the possession or control of either of appellants. Such action, if pursued by this court, would deprive appellants of property without due process of law, and deny them equal protection of the law: *Hovey v. Elliott* (1896) 167 U.S. 407, 17 S. Ct. 841, 43 L.ed. 215."

This statement became irrelevant because the state Supreme Court refused to act upon the motion for dismissal of the appeal until the contempt adjudication had been reviewed and affirmed (R. 23-24).

We understand that "this court will not pass upon any federal question not shown by the record to have been raised in the state court or considered there, whether it be one arising under a different or the same clause in the Constitution with respect to which other questions are properly presented." *People ex rel. Cohn v. Graves*, 300 U.S. 308, 81 L.ed. 666, 57 S.Ct. 466. This rule has peculiar force when applied to review of state court decisions as to the validity of state legislation (*Wilson v. Cook*, 327 U.S. 474, 90 L.ed. 793, 66 S.Ct. 663), and the same considerations enter here, where action of the highest court of the state, governing a remedy in that court, is under attack.

ADDITIONAL STATEMENT OF THE CASE

September 4, 1951, the 95 respondents recovered judgment in the total amount of $475,000.00 against petitioner and Joseph Harris, its agent (R. 1-8). Petitioner and Harris appealed but did not supersede (R. 12) and the judgment was therefore enforceable pending appeal. Revised Code of Washington (R.C.W.), Section 4.88.060, Laws of 1893, C. 61, Section 7; Rules on Appeal, Vol. 34A Wash. Reports, Rule 25, p. 27; *Cunningham v. Mitchell*, 126 Wash. 294, 218 Pac. 386; *Ryan v. Plath*, 18 Wn.(2d) 839, 140 P.(2d) 968.

In supplemental proceedings looking toward enforcement of the judgment, a receiver was appointed and petitioner was directed to transfer certain bonds to the receiver, all as specifically authorized by statute. R.C.W., Section 6.32.290, Laws of 1893, C. 133, Section 28; and R.C.W., Section 6.32.080, Laws of 1893, C. 133, Section 8. It was not proposed that the receiver disburse the proceeds of these bonds, or distribute the bonds, but that the bonds be held by the receiver pending the outcome of the appeal from the money judgment (R. 49). Petitioner failed to comply with the order and was adjudicated in contempt (R. 9). Upon appeal the contempt adjudication was affirmed and the court ordered that the appeal from the money judgment be dismissed unless petitioner purge itself within 15 days (42 Wn.(2d) 648, 257 P.(2d) 629). Petitioner having failed to purge itself, the appeal was dismissed (R. 53).

Petitioner appealed to this court from the decision of the state Supreme Court affirming the adjudication

tion Corp., 347 U.S. 657 (Respondents' Brief, pp. 28-30) is not well taken since that very case leaves open the question of whether the reinstatement and back pay provisions of the Labor Management Relations Act of 1947, 61 Stat. 163, 29 USC 141, et seq., do not afford an exclusive remedy for interference with an employee's opportunity to obtain employment.

That the scope of the area pre-empted by the federal legislation is still uncertain is seen by the fact that at least five petitions for writs of certiorari are presently pending in this Court in cases involving this or closely related questions.[14]

CONCLUSION.

For the reasons stated, it is respectfully submitted that the judgment of the Court below should be reversed.

Dated, San Francisco, California,
October 8, 1954.

Respectfully submitted,
NORMAN LEONARD,
Counsel for Petitioner.

GLADSTEIN, ANDERSEN, LEONARD & SIBBETT,
Of Counsel.

---

[14] All October Term, 1954: *Weber v. Anheuser Busch Inc.*, No. 97 (265 S.W. 2d 325 [Mo.]); *General Drivers Etc. Union v. American Tobacco Co.*, No. 186 (264 S.W. 2d 250 [Ky.]); *Amalgamated Clothing Workers v. Richman Bros. Co.*, No. 173 (211 F. 2d 443 [CA 6]); *Rors v. Lambe*, No. 278 (213 F. 2d 407 [CA 9]); cf. *Harris v. Batt'e*, No. 111 (Va.).